APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,333	04/21/2004	Reuven Zeitak	Q92263	5462

23373   7590   07/09/2009
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EXAMINER
REDDIVALAM, SRINIVASA R

ART UNIT	PAPER NUMBER
2419	

MAIL DATE	DELIVERY MODE
07/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/828,333	Applicant(s) ZEITAK ET AL.
	Examiner SRINIVASA R. REDDIVALAM	Art Unit 2419

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>19 June 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of this Advisory Action.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-21</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Chirag G Shah/
Supervisory Patent Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: In pages 3-4 of Applicant's Remarks, regarding claim 1, Applicant mentions that Sekihata could be combined with Russell, such combination, would disclose, at best, bandwidth control of the Ethernet frames (L2), and would not disclose or suggest that: each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead ... wherein the data path includes a plurality of network data protocols and wherein said uncounted overhead comprises overhead from the plurality of network data protocols as recited in claim 1 and Applicant further submits that the cited art of record also does not disclose or suggest: configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead, whereby each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead as determined by said overhead criterion, thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth, as recited in the claim 1.

However, Examiner respectfully disagrees to these statements from the Applicant as Sekihata et al. teach a method for charging for uncounted network traffic overhead, the method comprising: configuring said rate regulator with said respective overhead criterion to charge for uncounted overhead (see paragraphs [0016] and [0017] wherein adjustment of packet interval by the difference between the line bandwidth and the setting bandwidth is mentioned and packet length, shown in Fig.5, which causes packet interval, includes IPG bytes i.e. INTER PACKET GAP bytes which is equivalent to uncounted overhead, is taken into account by setting bandwidth in bandwidth control apparatus), whereby each data packet transmitted through said rate regulator is transmitted to said egress port as a packet containing said uncounted overhead as determined by said overhead criterion (see para [0048] wherein transmitted packet having data length of 64 bytes is mentioned and the packet length to which the preamble and the like i.e. IPG bytes are added, assumes 84 bytes, is also mentioned and also see Fig.5 wherein IPG bytes of 12 i.e. Inter Packet Gap of 12 bytes which is additional bytes of the packet/uncounted overhead is mentioned as part of the transmission of the packet), thereby ensuring that said regulator bandwidth does not exceed said egress port bandwidth (see para [0017 wherein enabling the outputted packet to be completely confined within the setting bandwidth is mentioned and also see Fig.6D wherein same value i.e. 100Mbps for setting bandwidth and line speed i.e. egress port bandwidth is mentioned and continuous transmission of packets without any packet loss and with IPG bytes included is mentioned which is equivalent to ensuring that said regulator bandwidth does not exceed said egress port bandwidth), and Russel et al. teach the method wherein the data path includes a plurality of network data protocols and wherein said uncounted overhead comprises overhead from the plurality of network data protocols (see Fig.8, col.7, line 52 - col.8, line 10 and col.9, lines 1-19 and also see co1.10, lines 1-20 wherein the data path including a plurality of network data protocols i.e. Ethernet channels over SDH network are mentioned and also each Ethernet channel connected between a pair of Ethernet frame switches undergoing rate adaption for entry and exit to SDH ring network is mentioned) and thus Sekihata et al. in combination with Russell teach all limitations of claim 1 which was also mentioned in the last office action mailed on 03/20/2009.

In page 4 of Applicant's Remarks, regarding claim 1, Applicant mentions that Sekihata's line bandwidth is directed to the line speed of the network's medium, and not to an egress port bandwidth and thus,Sekihata suffers from the deficiency that additional overhead may result in excess bandwidth at the egress port after the additional overhead is added at the egress port. However, Examiner respectfully disagrees to these statements from the Applicant as Sekihata's line bandwidth is directed to an egress port bandwidth as Sekihata clearly mentions that the speed of outputting the packet from the counter 32 of the bandwidth control apparatus of Fig.1 as the line bandwidth (see para [0015]).

The rejection of all other claims is already mentioned in the last office action mailed on 03/20/2009.